IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4851 OF 2002

M.V. Bhagwat
F/2, Akalpita Housing Society,
Sahar Road, Andheri,
Mumbai. .. Petitioner

V/s

1. State of Maharashtra

2. MHADA, Griha Nirman Bhawan
Bandra (East), Mumbai-400 054

3. D.R. Hadadre
Chief Officer, MHADA
Bandra (East), Mumbai-400 054. .. Respondents

Mr.S.S. Vaidya for the Petitioner.

Mr.S.R. Nargolkar, A.G.P. for Respondent No.1.

Mr.G.W. Mattos for the Respondents Nos.2 and 3.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 10TH AUGUST 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. The Petitioner herein is a former Assistant Estate Manager under the 2nd Respondent - Housing Area and Development Authority. The Respondent No.2 alleged certain acts of misconduct on the part of the Petitioner and, therefore, he was served with a charge-sheet and was initially suspended. Amongst others, one of the

charges was to make allotment of a tenement to a ficticious person who was not eligible and not charging the correct amount for the excess area made available to him resulting into loss to the Housing Area and Development Authority. He was prosecuted as well. He was arrested on 1st April 1999 and was released on bail after quite some time. The prosecution under sections 406, 409, 420, 465, 467, 468, 471 read with 34 of I.P.C. is still pending. The Petitioner was suspended on 24th June 1999, but later on reinstated on 30th May 2000 just one day prior to his retirement and was allowed to retire on 31st May 2000. He filed this writ petition on 26th August 2002 seeking the release of the contribution of MHADA towards provident fund, his gratuity, earned leave and other remaining amounts. However, after filing of this petition, so far as his retirement benefits are concerned, he has been paid the same from time to time though some of those payments were not paid immediately. This was partly because the departmental enquiry against him was pending.

2. The departmental enquiry against the Petitioner was concluded by giving a report on 30th August 2002 finding him guilty on some of the charges and an order came to be passed on 15th July 2004 forfeiting an amount of Rs.10,000/- from the contribution of employer towards

the provident fund. This was under Regulation 32(c) of the MHADA Contributory Provident Fund Rules. The remaining part of provident fund was released. This order was passed on 15th July 2004. The only retirement benefit, which remained to be paid to him by that time, was gratuity which was Rs.2,65,780/-. It was paid to him on 29th July 2004. As of now, all amounts payable by way of retirement benefits except the forfeiture of Rs.10,000/- have been released to the Petitioner. Therefore, by the time the petition has reached final hearing, the only submission of the Petitioner is for the interest on account of delay in paying the gratuity amount. Mr.Vaidya, learned counsel for the Petitioner, submitted that whereas the Petitioner was allowed to retire on 31st May 2000, he has been paid this gratuity amount on 29th July 2004 and for this period of about four years, appropriate interest ought to be paid to him. Mr.Vaidya has relied upon section 7(3A) of the Payment of Gratuity Act, 1972 which provides that in the event of delay in paying the amount of gratuity, the employer is liable to pay interest at such rate not exceeding the rate notified by the Central Government from time to time. The rate fixed is not exceeding 10% and under section 7 sub-section (3), delay is to be calculated 30 days from the date on which the amount becomes payable.

3. Mr.Mattos, learned counsel appearing for Respondents Nos.2 and 3, submitted that there is a sufficient explanation for the Respondents as to why the gratuity amount was not released immediately. He submitted that the departmental enquiry against the Petitioner was pending and until that was concluded, the officers thought it fit not to release the gratuity amount as well. He pointed out that whereas the final order is passed on 15th July 2004, within two weeks thereafter i.e. on 29th July 2004 the amount of gratuity has been paid. He therefore submits that no interest should be awarded on account of this delay.

4. Mr.Mattos submitted that although the Petitioner is trying to make his claim on the basis of Payment of Gratuity Act, it is the Regulation framed by MHADA known as MHADA Employees Gratuity Regulations, 1985 framed under section 185 of Maharashtra Housing and Area Development Act which will govern the field. He submits that the Petitioner was working as an Assistant Estate Manager, which is quite a senior post and cannot be said to be an employee covered under the Payment of Gratuity Act. The definition of "employee" under the Payment of Gratuity Act has been widened after the Amendment Act 25 of 1984. It now covers a person whether or not any such

person is employed in a managerial or administrative capacity. However, the later part of this definition excludes those persons who hold a post under the Central Government or a State Government and who are governed under any other Act or by any Rules providing for payment of gratuity. Mr.Mattos, therefore, submitted that the service benefits of the Petitioner are governed under the Regulations framed under the MHADA Act, and under the MHADA Act as such there is no provision for payment of interest.

5. Since this dispute has been raised as to whether the Petitioner would be governed under the Payment of Gratuity Act, 1972 or the MHADA Employees Gratuity Regulations, 1985, we have perused the provisions of the Act as well as Regulations and what we find is that by and large the provisions are similar with some variation made by MHADA at some places. Thus, whereas under section 7(3) of the Payment of Gratuity Act, gratuity is to be paid within 30 days after it becomes payable under Regulation 10(6) of the MHADA Employees Gratuity Regulations, it is payable after 120 days. As far as the provisions with respect to forfeiture are concerned, we find them under section 4(6) of the Payment of Gratuity Act. Practically, similar provisions are made under Regulation 7(2)(A) & (B) of the MHADA Employees

Gratuity Regulations, 1985. Amongst others, both of them provide for forfeiture in the event of termination of service for acts constituting an offence involving moral turpitude. The Respondents have relied upon a judgment of the Apex Court in the case of **Management of Tournamulla Estate v. Workmen - (1973) 2 SCC 502** to point out as to when forfeiture is justified. As against this, the counsel for the Petitioner has relied upon the judgment of the Apex Court in the case of **Bhagirathi Jena v. Board of Directors, O.S.F.C. - 1999 LLJ 1236**, which lays down that there is no provision for continuing a departmental enquiry after superannuation, and that there can be no deduction from retirement benefits on that basis. He has relied upon the judgment of the Apex Court in the case of **D.V. Kapoor v. Union of India - (1990) 4 SCC 314**, which lays down that if at all pension and gratuity is to be deprived, it can only be in accordance with the procedure established by law and not otherwise, and then a judgment of a Division Bench of this Court in the case of **Ramdas Bakhle v. M.S.F.C. - 2000 (1) LLJ 1307**, where the Court held that in the absence of any provision of continuing disciplinary proceedings after superannuation, withholding of retirement benefits was unsustainable.

6. We would have gone into this question, but for a

fair statement made by Mr.Mattos on the instructions of the officers appearing for MHADA, that although there is no specific provision in the Regulations providing for interest when gratuity is delayed beyond 120 days, it implies that if the payment is to be made after 120 days, in the event of such delay appropriate rate of interest should be awarded. On a query from the Court, Mr.Mattos stated that although the Respondents very much rely upon the Regulations which do not have any provision for payment of interest, if Court is of the view that any such interest should be awarded, he has instructions to leave it to the Court to pass appropriate order.

6. We have considered the totality of the factors. We have noted that the Petitioner was proceeded in the departmental enquiry, but was allowed to retire on the date of his superannuation. He was released his retirement benefits from time to time and within 2 weeks after the completion of the enquiry, he was released the gratuity amount which was the only amount remaining to be paid at that point of time. There is some explanation on behalf of the Respondents for that. At the same time, what we find is that in the order at the end of the enquiry (which is not challenged by the Petitioner so far), only an amount of Rs.10,000/- has

been forfeited and that too from the employer's contribution towards provident fund. Thus, the amount of gratuity, which was to be paid to the Petitioner within 120 days after his retirement, got postponed for a period of more than 4 years. This amount was lying with the Respondents. Obviously, they have availed of the interest on this amount which the retired Petitioner would have otherwise availed of if the amount was to be paid to him. At the same time, as stated above, we cannot ignore the fact that the payment was delayed because of the pending enquiry and the officers deemed it proper to wait till the enquiry getting concluded. It is pointed out by the Respondents that the Petitioner was allowed to resume after suspension and retire with an express understanding that the enquiry will continue thereafter. It is also to be noted that the final decision on enquiry got delayed since the Petitioner took his own time to file his say on the enquiry report. The rates of interest have gone down during this period and the savings bank interest paid by the nationalised banks is just about 4%. Considering these factors, we award the Petitioner the simple interest at the rate of 4%, which is the present rate available on the savings account. Thus, on the delayed payment of Rs.2,65,780/- the interest for four years at this rate comes to Rs.42,524.80. We round up this amount to Rs.42,525/-

and direct the Respondents to make the payment within 6 weeks and in any case by 20th September 2005. In the event of any further delay, the Respondents shall pay interest at the rate of 6% on the unpaid amount.

8. Rule is made absolute as above without any order as to costs. All Civil Applications herein stand disposed of

9. Although the petition is thus disposed of, considering the factors as to how the gratuity amount got delayed in the case of the Petitioner, we expect the Competent Authority of the Respondents to see to it that they abide by the provisions of the Regulations to release the gratuity and other retirement amounts of the employees within the period provided under the Regulations.

10. Parties will act on an authenticated copy of this order.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)